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**The Special Counsel**

April 8, 2004

The Honorable John Conyers  
U.S. House of Representatives  
2426 Rayburn HOB  
Washington, DC 20515

Dear Representative Conyers:

I am writing as a follow-up regarding our office's legal review of the discrimination statute under Title 5, Section 2302(b)(10).

As you know, this statute prohibits discrimination on the basis of "conduct which does not adversely affect the performance of the employee or applicant or the performance of others." The Office of Special Counsel has always enforced claims of sexual orientation discrimination based on actual conduct. Based on its review, OSC has concluded that such authority exists in cases other than actual conduct when reasonable grounds exist to infer that those engaging in discriminatory acts on the basis of sexual orientation have discriminated on the basis of imputed private conduct. Such inferences will now apply to all claims under Section 2302(b)(10), including, but not limited to, sexual orientation discrimination claims.

The materials formerly on OSC's Web site were not clear about the statutory basis for OSC's authority. OSC believes that the materials currently on its Web site are consistent with the view of the law described above, but intends to review and revise those materials as necessary to ensure that employees are fully aware of the protections provided.

I am fully committed to enforcing the law and look forward to working with you to make sure all federal employees are protected from workplace discrimination and other prohibited personnel practices.

Respectfully,

A handwritten signature in dark ink, appearing to read "Scott J. Bloch".

Scott J. Bloch